IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

WA.No. 642 of 2001(E)

AGAINST THE JUDGEMENT IN OP.4701/1992
.....

APPELLANT/1ST RESPONDENT:

THE CORPORATION OF THIRUVANANTHAPURAM,
REPRESENTED BY ITS COMMISSIONER,
THIRUVANANTHAPURAM.

BY ADV. SRI.C.P.SUDHAKARA PRASAD &
ADV.SRI.S.RAMESH

RESPONDENTS/PETITIONERS & RESPONDENTS 2 & 3:
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1. G.S.MURALEEDHARAN NAIR, SECRETARY, SREE DHARMA SASTHA KSHETRA SAMRAKSHANA SAMITHI, REG.NO.507/80, (KERALA KSHETRA SAMRAKSHANA SAMITHI, PANGOD UNIT) SASTHA NAGAR, PANGODE, THIRUMALA P.O., THIRUVANANTHAPURAM-6.

2. P.GOPAKUMAR, SECRETARY, SREE BALA SUBRAMANIA KSHETRA SAMRAKSHANA SAMITHI, REG.NO.596/81 (KERALA KSHETRA SAMRAKSHANA SAMITHI UNIT), EDAPPAZHANJI, THIRUVANANTHAPURAM-10.

@ 3. SRI.C.P.RAVEENDRAN NAIR, SECRETARY, SASTHA NAGAR RESIDENTS ASSOCIATION, REG.NO.394/1990, T.C.NO.17/1141 SASTHA NAGAR, PANGODE, THIRUMALA P.O., THIRUVANANTHAPURAM-6. (DELETED)

4. SRI.C.K.SIVANANDAN PILLAI, SECRETARY, VIVEKANANDA NAGAR RESIDENTS ASSOCIATION, REG.NO.1181/90, VIVEKANANDA NAGAR, DO. DO.

5. SRI.V.VIJAYAKUMAR, SECRETARY, SRI. CHITHRA NAGAR RESIDENTS ASSOCIATION, REG.NO.591/91, USHAS, DO.

6. SRI.P.K.KARUNAKARAN NAIR, SECRETARY, PALOTTU KONAM RESIDENTS ASSOCIATION, REG.NO.246/90, EDAPPAZHANJI, SASTHAMANGALAM P.O., TRIVANDRUM-10.

7. SRI.S.SURENDRAN NAIR, SASTHA ARTS AND SPORTS CLUB, REG.NO.889/91, PANGODE, THIRUMALA P.O., TRIVANDRUM.

8. SRI.K.MOHANA CHANDRAN, SECRETARY, 683/87, ANASWARA ARTS & SPORTS CLUB, REG.NO.683/87, KARAVILA ROAD, THIRUMALA P.O., THIRUVANANTHAPURAM-6.

9. STATE OF KERALA, REPRESENTED BY ITS SECRETARY, LOCAL ADMINISTRATION DEPARTMENT, THIRUVANANTHAPURAM.

10. THE KERALA STATE POLLUTION CONTROL BOARD, THIRUVANANTHAPURAM.

(R3 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE PETITIONER VIDE ORDER DATED 22.6.2001 IN CMP 5184/2001)

R10 BY ADV. SRI.N.N.SUGUNAPALAN
SRI.JOE KALLIATH
R1, R2, R4, R5 & R7 BY SRI.S.GOPAKUMARAN NAIR
SRI.BABU JOSEPH KURUVATHAZHA,SC,POLU.C.
R9 BY SR.GOVERNMENT PLEADER SMT.MEERA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 04/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A.No.642 of 2001

Dated, this the 4th day of June, 2007

JUDGMENT

H.L.Dattu, C.J.

Challenging the correctness or otherwise of the orders passed by the learned Single Judge in O.P.No.4701 of 1992 dated 11th December, 2000, the first respondent/Corporation of Thiruvananthapuram is before us in this writ appeal.

2. Petitioners in the writ petition are permanent residents of Edappazhanji-Pangodu, Thiruvananthapuram. The first petitioner is the Secretary of Sreedharmasastha Kshetra Samrakshana Samithi which is a registered association. The second petitioner is the Secretary of Sree Balasubramania Kshetra Samrakshana Samithi which is also a registered association. Petitioners 3 to 6 are Secretaries of various registered residents' associations. They all filed the writ petition before this Court, inter alia, requesting this Court to direct the Corporation of Thiruvananthapuram to implement a resolution passed by the Mayor in the presence of Councillors of Thiruvananthapuram Corporation (Ext.P8) and further to restrain the Corporation from running the wholesale fish market at Edappazhanji-Pangodu.

3. The learned Single Judge after tracing the history of the several requests made by the petitioners associations and also the grievance of the residents of Edappazhanji-Pangodu and also taking into account the difficulties pleaded by the Corporation, had thought it fit to allow the writ petition with a specific direction to the Corporation to implement the

resolution passed by responsible persons like Mayor and other Councillors of Thiruvananthapuram within six months from the date of receipt of a copy of the order and further restrained the Corporation from running the wholesale fish market at Edappazhanji-Pangodu after six months from the date of the order.

4. Aggrieved by the said order, the Corporation is before us in this writ appeal.

5. A Division Bench of this Court while entertaining the writ appeal had granted a conditional interim order staying the orders passed by the learned Single Judge. In that they have stated as under:

> "Heard counsel on both sides.
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> 2. It is the case of the Trivandrum City Corporation that a new modern wholesale fish market, in accordance with technical advice rendered by the Central Institute of Fisheries, is proposed to be constructed in place of the existing wholesale fish market. The Corporation submits that, when the new wholesale fish market comes up, the problems with regard to the environment pollution alleged in the Original Petition would disappear as the water and effluents would be properly treated so as to render them innocuous. The problem with regard to noise pollution would also disappear since auctions will be conducted within the premises of the compound wall of the fish market. According to the Corporation, the problem of parking of lorries would also be resolved, since there is an additional 39 cents of puramboke land adjacent to the present premises of the market which can be converted into a parking place for the lorries. Counsel for the Corporation states that this land is in their possession and under the Kerala Municipalities Act, they are entitled to this land.
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> 3. Shut down of the market would mean unemployment of a number of headload workers and fisherfolks and others and would lead to sociological and law and order problems. We are not inclined to make a direction for shutting down the market without there being an alternate solution to the vexing issue. The solution propounded by the Corporation appears to be feasible and likely to take care of the problems posed in the Original Petition. Learned counsel

for the petitioner, however, contends that, even if the Corporation puts its plan into action, the problems faced would not disappear. That is yet to be seen.

4. In any event, we are of the view that, the Corporation should be given an opportunity to demonstrate its intentions. In order to enable the Corporation to demonstrate its bona fides in the matter, we direct that the order of the learned Single Judge under appeal shall stand stayed for a period of three months. The Corporation shall, in the meanwhile, be at liberty during to proceed ahead with its plan of action. We shall review the situation at the end of the period of three months, and if we are not satisfied that Corporation has made substantial progress, we might review continuation of the stay of the order of the learned Single Judge.

5. The Corporation is well advised to note that, if on the next date of hearing, we are satisfied that the Corporation has not taken any genuine substantial steps to progress in the matter, no request would be entertained to grant further time, inasmuch as time is being given from today till the next date of hearing for making alternate plans, and, if necessary, even to shift the market if the alternate plan is not likely to materialise.

The order under appeal is accordingly stayed for a period of three months from today."

6. The Court also had granted sufficient time to the Corporation to take all effective steps to construct a modern fish market in a place far away from the existing fish market. The Court further observed in its interim order that the Councillors of the Corporation should come out with a positive statement with alternate plans they have decided for the purpose of construction of the fish market.

7. This writ appeal is pending in this Court for the last seven years. Now an affidavit is filed by the Secretary of the Corporation. In that, except stating that they had invited tenders for construction of a new modern wholesale fish market and the tenders they received had been forwarded to the State Government for its approval, nothing else has been done in the

affidavit filed before this Court dated 7th January, 2007.

8. Learned counsel appearing for the Corporation is not in a position to say anything on merits of the appeal except once again pleading the difficulties of the Corporation to shift the fish market from the present place to a different place. The plea of the learned counsel for the Corporation would not impress us at all. This Court while disposing of the writ petition had granted six months time to the Corporation to shift the fish market. That six months had elapsed long back. Even after nearly seven years the Corporation has not done anything in the matter. That only shows that the Corporation is not making any serious effort to shift the fish market and thereby alleviate the grievance of the residents of Edappazhanji-Pangodu. In our opinion the affidavit filed by the Secretary cannot be accepted.

9. In a situation like this, in our view, while rejecting the appeal filed by the Corporation, a direction requires to be issued to the Corporation to take all effective steps to shift the fish market from the present place to a different place within an year's time from the date of receipt of a copy of this Court's order. Accordingly, the following:

Order

i) The writ appeal is rejected since it is devoid of any merit.

ii) A direction is issued to the Corporation of Thiruvananthapuram to implement the orders and directions issued by the learned Single Judge and also the interim direction issued by the Division Bench of this Court in C.M.P.No.5564 of 2001 dated 26th September, 2001 as expeditiously as possible, at any rate within an year's time from the date of receipt of a copy of this Court's order.

iii) If for any reason, the Corporation is not in a position to shift the wholesale fish market after one year, the Corporation is restrained from running the wholesale fish market at Edappazhanji-Pangodu after one year from the date of receipt of this Court's order.

With these observations and directions the writ appeal is dismissed. All pending interlocutory applications stand dismissed.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns/DK